THE BRITISH MALAYA TRUSTEE & EXECUTOR CO., LTD. as the COMMITTEE OF THE ESTATE OF TAN SOO GUAN v. TAN KANG MENG.

[Rent Conciliation Board (Eu Cheow Chye, President, Lim Kian Lee and Ee Peng Liang, Members) July 28, 1953]

[Singapore — Rent Conciliation Board Application No. 338 of 1953]

Landlord and tenant — Control of Rent Ordinance, 1953 — Whether repealed Control of Rent Ordinance, 1947, should be applied to pending applications before Rent Conciliation Board — Interpretation and General Clauses Ordinance, 1951, s. 14 — Effect of repeal.

In this application two preliminary points of law were raised. On the first point, as to whether the repealed 1947 Control of Rent Ordinance should be applied to pending applications, the Rent Conciliation Board was of the opinion that the Control of Rent Ordinance No. 22 of 1953 should be applied mainly on the ground that the Board cannot go beyond the powers and jurisdiction conferred by section 9(1) of the new Ordinance. The Board doubted whether the landlord can be said to have acquired a right to increase rent as to entitle him to the protection given by section 14 of the Interpretation and General Clauses Ordinance, 1951. It would be more reasonable to say that the landlord only had the right to apply to the Board and that right remains unaffected under the repealing Ordinance.

The second point raised concerned the construction of the latter part of the proviso to section 9(1)(b) of the 1953 Ordinance. The Board held that what this proviso means is that the amount of increase permitted in respect of the special class of premises defined in section 7(1)(c) is to be taken as a basis upon which the limit allowed by the proviso is to be calculated.

Case referred to:—

(1) *Yap Heng Mun v. Chiew Siang Kwang* (1948) M.L.J. 172.

RENT CONCILIATION BOARD APPLICATION.

M. Karthigesu for the applicants.

A. P. Rajah for the respondent.

Cur. Adv. Vult.

Eu Cheow Chye, President: — In this application, a preliminary point of law was raised as to whether the 1947 Control of Rent Ordinance which was repealed by section 32 of the new Ordinance No. 22 of 1953, would still apply to Applications instituted before the new Ordinance came into force on the 20th July 1953 and pending before the Board.

Counsel for the applicant-landlord maintained that the 1947 Ordinance applies, and relied on section 14 of the Interpretation and General Clauses Ordinance 1951, the relevant parts of which provide that where a written law repeals in whole or in part any other written law, then, unless a contrary intention appears, the repeal shall not affect any right acquired, accrued or incurred under any written law so repealed, nor shall it affect any legal proceeding or remedy in respect of any such right, and any such legal proceeding or remedy may be instituted, continued or enforced as if the repealing law had not been passed. This section follows closely upon the wording in section 38(2) of the English Interpretation Act of 1889, and a number of authorities show that where a statute is passed while an action is pending, strong and distinct words are necessary to alter the vested rights of either litigants as they stood at the commencement of the action. Therefore, in order to rely on section 14 of the Interpretation and General Clauses Ordinance, it must be shown that the applicant-landlord has acquired a right under the repealed ordinance, and that the repealing ordinance does not disclose any clear intention to the contrary to affect such acquired right.

The question then arises whether it can be said that prior to the coming into force of the new Ordinance a right to increase rent has been acquired by or accrued to the landlord. If that is so, that right cannot be disturbed unless the new Ordinance clearly indicates a contrary intention. No direct authority can be cited to support the view that the landlord has a *right* to increase rent, and the case of *Yap Heng Mun v. Chiew Siang Kwang*[1] does not, in my view, give authority on the point. That was a case for possession brought before an ordinary Court and it was there held that the landlord always had his common law right to recover possession but this right had been restricted by the repealed Ordinance. Here we are dealing with an application by the landlord to the Rent Conciliation Board to increase rent. I do not think that the landlord can be regarded as having a right to increase rent; that right has been conferred on the Rent Conciliation Board.

Counsel for the respondent has put forward an interesting argument in which he maintained that it is not a question of disturbing the right of the landlord at all. He still has the same right under the new Ordinance, but his right merely consists in his being at liberty to make an application to the Board to increase rent. His right to apply to the Board remains unaffected. What has been affected is that the discretion of the Board is now limited by the proviso to section 9(1)(b).

Although I am inclined to accept this view as a reasonable and proper one, I consider that a stronger reason for not applying the 1947 Ordinance is that the Board has no power or jurisdiction to increase rent except as provided by section 9(1) of the new Ordinance. Even assuming that the landlord has acquired a right under the repealed Ordinance I cannot see how the Board can go beyond the powers conferred by the new Ordinance.

I am fortified in this view when I consider the history of our Rent Control legislation. Shortly after the Control of Rent Ordinance No. 25 of 1947 was passed, a supplementary Ordinance No. 30 of 1947 was enacted which specifically provided that the Rent Conciliation Board established and appointed under the Principal Ordinance shall have power :—

(a) to carry on all proceedings commenced under either the Increase of Rent (Restriction) Ordinance 1939 or the Rent Assessment Board (Additional Powers) Ordinance 1946 and not finally disposed of on or before the coming into force of the Principal ordinance;

(b) to entertain, hear and dispose of any proceedings arising out of any right, privilege, exemption, obligation or liability acquired or incurred under and by virtue of the said Increase of Rent (Restriction) Ordinance 1939, or the Rent Assessment Board (Additional Powers) Ordinance 1946, on or before such date which might have been instituted under the provisions of the said Ordinances;

and for such purposes shall have and exercise all the powers and jurisdiction conferred upon the Rent Assessment Board under the provisions of the said Ordinances.

The omission of this provision from the 1953 Ordinance strongly suggests that the Legislature did not intend the present Board to exercise the power and jurisdiction conferred under the provisions of the 1947 Ordinance.

Holding as I do, that the new Ordinance applies to all pending applications before the Board, a further preliminary point raised by Counsel for the respondent remains to be decided, and that is whether the Board has power to increase any rent at all under the proviso to section 9(1) (b) of the new Ordinance in view of the words "permitted under paragraph (c) of subsection (1) of section 7 of this Ordinance" appearing in the last two lines. Counsel for the respondent contended that the Board can increase the rent up to the limit allowed by the proviso only when an increase is permitted by section 7(1) (c), and an increase under that paragraph is permitted only when two conditions are fulfilled, namely :—

(a) That the premises were let on or before the 1st January, 1941.

(b) That there has been no increase of rent subsequent to that date.

Therefore, it was submitted that if there has been an increase since that date, no further increase can be made under the proviso because a further increase will not be permitted under section 7(1) (c).

On a proper construction of the sections referred to, I do not agree to this submission. The governing word in the latter part of the proviso is not "permitted". The proviso should I think be read as a whole and it deals with the extent to which the Board can increase the rent in respect of the tenancy of *any premises*. Section 7(1) (c) which appeared for the first time in the 1947 Ordinance deals with a special class of premises, and the proviso deals with *any premises*. I consider that what the proviso means is that the amount of increase permitted in respect of the special class of premises defined in section 7(1) (c) is to be taken as a basis upon which the limit allowed by the proviso is to be calculated. In other words, under the proviso to section 9(1) (b) the Board cannot fix a rent exceeding twice the amount stated in the First Schedule to the Ordinance.